

1991.11.01

November 1, 1991

Fred W. McCluskey
Mission Operation and Maintenance, Inc.
18872 MacArthur Blvd., Suite 400
Irvine, CA 92715-1448

Re: Your Letter of May 20th

Dear Mr. McCluskey:

This is intended to respond to your letter of May 20, 1991, wherein you propose the implementation of 12-hour shift schedules.

I must first address what appears could be a misunderstanding concerning which IWC Order your firm operates under. From the name of your company I gather that you provide maintenance services. If I am correct, your firm is operating under Order 5-89¹, not 4-89.

As to the alternative workweek you propose I must advise you that the proposal you submit would not be valid. You propose instituting alternating workweeks consisting of one (or more) workweek(s) of four twelve-hour days (48 hours) followed by one (or more) workweek(s) of three twelve-hour days (36 hours).

An alternative work schedule may not provide for more than forty hours on a regular basis in a work week. While intermittent overtime is not precluded, a regular schedule which provides for more than forty hours in a workweek is forbidden. The IWC in its "Statement of Basis" for the Orders promulgated since 1988, stated that it believed employees should have the option of entering into "a regularly scheduled workweek consisting of such hours and days as shall be agreed upon up to twelve hours a day within a forty-hour week." The Division of Labor Standards Enforcement has interpreted that language for enforcement purposes as precluding a regular schedule which exceeds either twelve hours in a day or forty hours in a week. I am attaching a copy of Interpretive Bulletin 89-1 which addresses this question at pages 4 and 5.

¹ Order 5-89 provides coverage for "Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units."

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If any firm were to adopt the proposal which you submitted, the DLSE would, under the enforcement policy outlined above, consider the plan a subterfuge to escape the overtime requirements of the law and would audit the work records as if no alternative workweek agreement existed. In other words, any work over eight in any one day would be considered overtime.

Your firm may seek the employees' approval of any alternative workweek arrangement which does not provide for more than twelve hours in any one day or forty hours in any one week. While approval of the plan by the DLSE is not a prerequisite to its implementation under Order 5-89, I'm sure that our local District office or Bureau of Field Enforcement unit in Santa Ana will be glad to review the plan with you. The phone number of the District office is 714/558-4115. The B.O.F.E. suboffice in the Santa Ana State Building can be reached by calling 714/558-4943.

I hope this adequately addresses the issues you raise in your letter of May 20th. Thank you for your interest in California labor laws.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. James Curry
John Carter, Sr. Deputy, Santa Ana
Ed Voveris, Regional Mgr., D.O., Southern
Roger Miller, Regional Mgr., BOFE, South